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Letter dated 25 June 1996 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General

I have the honour to request that the attached document, containing the views of the Cuban authorities on the procedure followed in the investigation conducted by the International Civil Aviation Organization (ICAO) team on the violation of Cuba's territorial airspace and on the report of the investigation, be circulated as a document of the fiftieth session of the General Assembly, under agenda item 140, and of the Security Council.

(Signed) Bruno RODRÍGUEZ PARRILLA
Ambassador
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Annex

[Original: Spanish and English]

Views submitted by the Cuban authorities on 24 June 1996 concerning the procedure followed in the investigation conducted by the International Civil Aviation Organization team on the violation of Cuba's territorial airspace and on the report of the investigation

The appendix to annex 13 of the 1944 Convention on International Civil Aviation clearly establishes the methodology to be used and the elements that should be included in each chapter of the reports on investigations of aviation accidents or incidents under this Convention. This time, the use of that methodology has been inappropriate and incomplete. By not complying with the provisions of the above-mentioned appendix, the section dealing with the facts is unbalanced and omits core elements, such as the causes and background of the events and information on the activities and real nature of the "Brothers to the Rescue" organization.

As has been established, the Government of the Republic of Cuba received, in good time, the section of the report dealing with the facts. Accordingly, the comments and suggestions requested by the investigating team were appropriately and promptly prepared and forwarded. These comments and suggestions were not taken into account in the final text distributed to the International Civil Aviation Organization (ICAO) Council members.

In accordance with the procedure set up by the investigating team, technical meetings were to have taken place on 20 and 21 June 1996 between the team and the Cuban and United States delegations. From the outset, Cuba felt that these meetings were of no use whatsoever, since it was already clear that they would be purely formal and that, in such a context, it would be impossible to introduce amendments beyond merely correcting factual errors. In other words, it would not be possible to correct the omissions, contradictions, inaccuracies and manipulative statements in the investigating team's report.

The investigation was to have been completed by 6 May 1996, according to the timetable set for the ICAO Council in its resolution of 6 March 1996. The delays on the part of the United States in providing the information requested of it, including important evidence such as radar images, forced the ICAO Council on the very same day, 6 May, to extend the deadline for the completion and submission of the report. This deadline continued to be extended, as there were further delays in the submission of evidence by the United States.

Some weeks ago, long before we were informed about the first part of the report, the ICAO Council and the members of the Security Council were warned about the strange and suspicious failure on the part of the United States to hand over evidence, as reflected in General Assembly and Security Council document A/50/959-S/1996/370 of 23 May 1996, which contains the following paragraphs:

"The ICAO team asked the Government of the United States to present seven pieces of evidence as part of the information and additional materials requested. The failure by the United States to produce the seven pieces of evidence in a timely manner forced the ICAO Council to postpone the submission of the final report on the investigation and the consideration of the matter for another month, extending the time stipulated in the resolution adopted by this organization.

"Given the fact that the evidence requested from the United States by the ICAO team is part of the technical evidence obtained during the occurrence of the incident, the delay in the presentation of said evidence by the aviation authorities and the Government of the United States is worthy of note."

This warning was repeated in General Assembly and Security Council document A/50/980-S/1996/449 of 19 June 1996, as follows:

"Unfortunately, the absence of similar diligence on the part of the United States and its withholding of and delay in turning over some evidence, without any explanation, have prolonged the investigation process and caused its consideration by the ICAO Council to be postponed twice.

"We cannot ignore the fact that political pressures and sordid electoral interests are contaminating this issue, nor are we unaware of the heated electoral speeches and domestic policy manoeuvres that are taking place. All of these amount to cynical acts of political support for the aforesaid illegal activities or, at the least, make a decisive contribution to the climate of impunity in which these activities are taking place."

For the above-mentioned reasons the investigative process took more than three months, and this meant that the report was not distributed to ICAO Council members until the afternoon of Thursday, 20 June 1996. Now the report is supposedly scheduled to be considered by the Council on 26 June 1996, just five days after it was distributed. To make matters worse, three of those five days are holidays in Montreal. This last-minute haste contrasts suspiciously with the laxness and flexibility of the process during the time when the United States Government was delaying it. It is obvious that the amount of time now being given to the ICAO Council members to consider and examine the report, send it to their capitals and receive the necessary instructions is ridiculously short. To Cuba, this unnecessary and even pernicious haste is incomprehensible.

It was acknowledged in the interim report submitted by the investigating team to the Council at its meeting of 6 May - at which it was decided to grant an extension for the completion and submission of the report - that "by 30 March 1996" (one day before the end of the scheduled visit to Cuba by the investigating team) "the authorities in Cuba had complied fully with all requests by the team for interviews, statements, civil and military data, documents and charts, as well as communications recordings and transcripts". In other words, by that early date the Government of the Republic of Cuba had already submitted all the proofs and evidence in its possession in a timely and transparent manner.

Moreover, the investigating team not only visited the United States on the dates indicated in the interim report, but also continued to hold "meetings and deliberations" with delegations of that country in Montreal until as recently as 3 and 4 June 1996. Curiously, these "meetings and deliberations" took place only with the United States; at no time were the Cuban authorities asked to hold additional talks with the investigating team.

The unfounded conclusions, the omissions, the inaccuracies, the irregularities and the contradictions evident in the report are conspicuous and make it an unbalanced, partial and far from objective document. The inequitable handling of the information provided by the parties, the value selectively placed on witnesses' statements and on "testimony" provided by third parties, the use of uncorroborated information provided by one of the parties and the rejection of information provided by the other party, the introduction into certain sections of the report of extraneous elements that steer the reader towards predetermined conclusions and the structure given to some sections confirm the report's partiality.

The report submitted by the ICAO team tends in almost every instance to question the credibility of the evidence provided by the Republic of Cuba, qualifying it with the phrase "according to the Cuban authorities", while it presents other elements, sometimes even of dubious origin, as if they were irrefutable evidence.

One example of this is how the report disregards and questions the accuracy of the statements made by the captain of the sailing boat that was in Cuban waters on the day of the incidents, whom the team interviewed and asked all the questions its members deemed pertinent, and how it presents as irrefutable the alleged "statements" of the crew of the fishing boat Tri-liner whom, according to the schedule of activities in the United States which it includes in its report, the ICAO team did not interview. Presumably, the alleged "statements" by those persons were provided to the investigating team by the United States authorities.

It can also be observed that the team finds credible the alleged position of the downing of the aircraft, as deduced from uncorroborated information on the position of the Majesty of the Seas cruiser and the Tri-liner fishing boat, itself deduced from information which the team did not verify personally, while it disregards almost all the evidence provided by the Republic of Cuba on this issue. This suspect information even provides the basis for some of the report's conclusions.

What is worse, however, is that the report tends to give credence to the "information" provided by the United States on communications between the pilots of the Cuban planes that gave pursuit and their ground control, which suspiciously contradicts the original version handed over by the Cuban authorities. .

As the reports indicates clearly, Cuba provided the original tape of the recording of radiocommunications between the military aircraft that intercepted the planes and their ground control, a copy of this recording on cassette and the tape recorder on which the original recording was made.

Furthermore, as regards the United States version, the report itself indicates that the ICAO team listened to a recording provided by the United States of the communications between the Cuban military aircraft that intercepted the planes and their ground control. The cassette with the recording was not handed over, but the ICAO team was given a transcript in Spanish and an English translation. Elsewhere, the report states that on 3 and 4 June 1996, the ICAO team analysed the original tape recording made by the United States of communications between the Cuban military aircraft and their ground control. It seems clear that the United States simply allowed the ICAO team to listen to its version of those communications and did not hand over the original tape. It is also striking that it only gave the team an opportunity to "analyse" the alleged "original tape" on 3 and 4 June, three and a half months after the incidents of 24 February 1996.

It is important to note the differences between the two versions. If they are analysed carefully and in conjunction with the capricious conclusion that the "most reliable estimate" of the position of the downing is "determined" by the location of the vessels Majesty of the Seas and Tri-liner, a version of events that, as we pointed out, is by no means proven, it can be seen that the bits added to the United States version of the communications amount to a suspicious and even absurd attempt to put words into the mouths of the Cuban pilots that would confirm the United States hypothesis as to where the aircraft were downed. This points to an obvious manipulation of the evidence by the United States authorities and to an attitude of complicity on the part of the ICAO investigating team.

This is not the only clear sign of manipulation in the report. An attempt is also made to cast doubts on the study of marine currents in the area submitted by the Cuban Institute of Oceanology, although the team interviewed specialists in Havana without the "doubts" that have now emerged ever coming up on that occasion. Mention should be made of the importance of that study, since the only remains of the downed aircraft that were traced were found within Cuba's territorial waters the day after the incidents, even though currents in the area flow away from rather than towards Cuba's coastline.

Moreover, the investigating team decided to make its own calculations of the position and direction of the sailing boat that was in Cuban waters when the aircraft were shot down, without doing the same for the other boats' positions, which it takes as correct without any kind of corroboration, just as it subjectively and capriciously disregards the assertions of the Cuban pilots and other evidence about the warnings given to the downed aircraft.

The report now in circulation treats as gospel truth the radar information provided by the United States, no matter how suspect, partial and misleading it may be.

The report is even guilty of manipulation and omission as regards information not supplied by the Republic of Cuba but which may help shed light on Cuba's actions in this case. For instance, it casts doubts on the 9 and 13 January 1996 violations of Cuban airspace which prompted the Cuban Government to take drastic decisions in defence of its airspace and sovereignty and even ignores information contained in official United States documents, such as the

March 1996 Order to Cease and Desist, and television broadcasts in the United States on the violations of Cuban sovereignty that occurred on those days.

To sum up, the innumerable examples that could be given of these kinds of manipulations, contradictions and omissions show that the report has been tailor-made to present a distorted picture of the facts and of what led up to them, in order to serve as a pretext for taking action against Cuba as part of the vendetta launched against Cuba 37 year ago by the United States Government. The use which the United States Government has made of the report so far, leaking its contents to the press before the other members of the ICAO Council had even seen it, also forms part of these obscure machinations.

Lastly, the absence of references to clear provisions of the 1944 Chicago Convention which have a direct bearing on the incidents in question and on what led up to them is also a source of concern to the Government of the Republic of Cuba. The preamble to the Convention is clear when it states that the abuse of civil aviation "can become a threat to the general security", while its article 4 stipulates that "Each contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention".

It is obvious that on this occasion, as in the many documented cases of violations of Cuban airspace which led up to the 24 February 1996 incidents (more than 35 since 1992), there was a clear "misuse of civil aviation". The Government of Cuba finds it difficult to understand why the investigating team did not include such elements among the findings of its report, unless its aim was to cover up, once again, the United States failure to fulfil its responsibilities and obligations under the Convention on International Civil Aviation.

The reason for the existence of ICAO, and its main responsibility, is to prevent and avert the repetition of these incidents, in other words, to put a stop to the violations of Cuba's sovereignty and territorial airspace.

These acts have occurred with absolute impunity because the United States has failed to meet its obligations in this regard.

The main effect of the decisions which ICAO is to take will be either to halt or to encourage this impunity.

This is also a decisive test for the organization and for the international community, when further violations of the sovereignty, airspace and territorial waters of the Republic of Cuba have been announced publicly for 13 July.